

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of License 3702 (Application 11122)

Adam Fencil

ORDER REVOKING LICENSE

SOURCE: Battle Creek

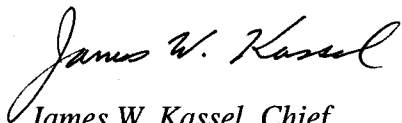
COUNTY: Trinity

WHEREAS:

1. A request dated January 19, 2004 has been received from the Licensee that the license be revoked by the State Water Resources Control Board (SWRCB), Division of Water Rights (Division).
2. The Division interprets the Licensee's request for revocation as a waiver of the notice and hearing requirements set forth in Water Code sections 1675 through 1675.2.
3. The SWRCB has found that Licensee failed to apply the water to beneficial use under the terms and conditions of this license.

THEREFORE:

It is ordered that License 3702 is hereby revoked by the SWRCB, and the water is declared to be subject to appropriation. This revocation may not result in additional water being available for new appropriations if there are applicable restrictions due to past SWRCB decisions regarding water availability.



*James W. Kassel, Chief
Hearings and Special Projects Section*

Dated: **MAR 29 2005**

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 11122

PERMIT 6530

LICENSE 3702

ORDER ALLOWING CHANGE IN PURPOSE OF USE, POINT OF DIVERSION
AND ADDITION OF A POINT OF DIVERSION

WHEREAS:

1. License 3702 was issued to Heninger Brothers and was filed with the County Recorder of Trinity County on April 7, 1953.
2. License 3702 was subsequently assigned to Cecil E. Bell.
3. The petitions for change in the purpose of use and point of diversion, have been filed with the State Water Resources Control Board and said Board has determined that good cause for such changes have been shown.
4. The Board has determined that the petitioned changes do not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The purposes of use under this license shall be as follows:

Fish culture, domestic and power

2. The points of diversion under this license shall be as follows:

1. South 100 feet and West 1,1700 feet from NE $\frac{1}{4}$ Corner Section 34, T38N, R9W, MDB&M, being within NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 34.
2. South 2,376 feet and West 1,056 feet from NE $\frac{1}{4}$ Corner Section 34, T38N, R9W, MDB&M, being within SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 34.

3. The paragraph pertaining to the continuing authority of the Board is replaced with the following:

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the

water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

Dated: APRIL 2 1987

Raymond Walsh

Raymond Walsh, Chief
Division of Water Rights

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STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

License for Diversion and Use of Water

APPLICATION 11122

PERMIT 6530

LICENSE 3702

THIS IS TO CERTIFY, That **Heninger Brothers**
c/o C. P. Heninger
Trinity Center, California

Notice of Change (Over)

have made proof as of July 29, 1952
(the date of inspection) to the satisfaction of the State Engineer of California of a right to the use of the water of
Battle Creek in Trinity County

tributary to Coffee Creek thence Trinity River

for the purpose of power, mining and domestic uses
under Permit 6530 of the Department of Public Works and that said right to the use of said water has
been perfected in accordance with the laws of California, the Rules and Regulations of the Department of Public Works
and the terms of the said permit; that the priority of the right herein confirmed dates from July 27, 1945;
and that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited
to the amount actually beneficially used for said purposes and shall not exceed three (3) cubic feet per
second to be diverted from January 1 to December 31 of each year.

Licensee shall at all times by-pass a minimum of one (1) cubic foot per
second, or the natural flow of the stream whenever it is less than one (1) cubic
foot per second, at the point of diversion to maintain fish life. 0140500

The point of diversion of such water is located south one thousand seven hundred
eighty (1780) feet and east one thousand three hundred fifty (1350) feet from
NW corner of Section 2, T 37 N, R 9 W, MDB&M, being within SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of said
Section 2.

The point of redirection from an unnamed stream is located south two
thousand three hundred seventy-six (2376) feet and west one thousand fifty-six
(1056) feet from NE corner of Section 34, T 38 N, R 9 W, MDB&M, being within
SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 34.

A description of the lands or the place where such water is put to beneficial use is as follows: mining use
at Prince Albert Group of Placer Mining claims within NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 34,
and W $\frac{1}{4}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 35, both within T 38 N, R 9 W, MDB&M, and power and
domestic uses within NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 34.

The water used for power and mining purposes is released into Coffee Creek
within NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 34, T 38 N, R 9 W, MDB&M.

All rights and privileges under this license including method of diversion, method of use and quantity of water
diverted are subject to the continuing authority of the Department acting through the State Engineer in accordance
with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or
unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from
time to time by the State Engineer.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion
herein specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Department.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property can not agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Witness my hand and the seal of the Department of Public
Works of the State of California, this 6th
day of April, 1953



A. D. Edmonston
A. D. EDMONSTON, State Engineer

1031-61 RECEIVED NOTICE OF ASSIGNMENT TO *Neil Heringer*

4-29-71 RECEIVED NOTICE OF ASSIGNMENT TO *Eric E. Bell*

4-22-99 Asds to Adam + Carol Fencil;

LICENSE 3702

STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

LICENSE
TO APPROPRIATE WATER

ISSUED TO *Heringer Brothers*

DATED

48807 7-31 IN STATE PRINTING OFFICE

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